

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA)	NO. MJ-05-303-CI
)	
Plaintiff,)	ORDER DENYING MOTION TO VOID
)	JUDGMENT AND ADVISING AS TO
v.)	APPEAL RIGHTS
)	
ROBERT RAE,)	
)	
Defendant.)	
)	

On October 25, 2005, a trial was held in the captioned matter. Assistant United States Attorney Stephanie Whitaker and Legal Intern Christopher Brecht represented the United States; Defendant appeared pro se. Following testimony by the government's witnesses and questioning by Defendant of the Kustom Signal Model Falcon Speeding Measuring device, the court found Defendant guilty of the charged offense of speeding and sentenced him to a fine of \$40, plus \$20 collection and \$10 assessment fees (to be paid within 30 days). Defendant was advised of his right to appeal.

On November 7, 2005, the court received a "Notice and Demand to Vacate Void Judgment," which the court construes liberally as a Motion to Void Judgment for lack of jurisdiction pursuant to FED. R.

1 CRIM. P. 34(a)(2).¹ Defendant contends the magistrate judge was
2 without jurisdiction to enter judgment against him because (1) there
3 was no apparent oath of office contract as required under 28 U.S.C.
4 § 453; (2) there was no evidence of a bond available for public
5 inspection; (3) there was no evidence of a government issued license
6 to practice law in the State of Washington or the United States; (4)
7 by questioning the accused, the magistrate judge acted as both
8 complainant and judge; and (5) the court lacked jurisdiction,
9 territorial, subject matter, and/or *in personam*, to prosecute the
10 charged offense. Additionally, Defendant challenges his conviction
11 and sentence was void because there was an arrest (as defined by
12 Black's Law Dictionary) without *Miranda* warnings; there was no
13 ability to confront the radar machine that accused him of speeding;
14 and incomplete discovery was provided by the government.

15 **OATH, BOND, LICENSE**

16 Section 453 of 28 U.S.C. provides that each judge of the United
17 States shall take the following oath or affirmation before
18 performing the duties of his or her office:

19 I, [name], do solemnly swear (or affirm) that I will
20 administer justice without respect to persons, and do
21 equal right to the poor and to the rich, and that I will
22 faithfully and impartially discharge and perform all the
duties incumbent upon me as [magistrate judge] under the
Constitution and laws of the United States. So help me
God.

23 Requests for a copy of the undersigned's completed oath is available
24

25 ¹FED. R. CRIM. P. 34(a)(2) provides, that upon defendant's
26 motion, the court must arrest judgment if the court does not have
27 jurisdiction of the charged offense. Such motion must be filed
28 within seven days of a finding of guilty.

1 for public inspection through the Administrative Office of the U.S.
2 Courts.² There is no statutory requirement the undersigned execute
3 a bond before performing her duties. The undersigned, as noted by
4 Defendant who referenced her state bar number, was licensed as an
5 attorney in the State of Washington. Finally, FED. R. EVID. 614
6 permits the court to call or question witnesses.

7 JURISDICTION

8 Defendant asserts the court had no territorial, subject matter,
9 or in personam jurisdiction because there were no court findings
10 summarizing evidentiary facts supporting jurisdiction. At the start
11 of trial, the government requested the court to rule on
12 jurisdictional issues; Defendant advised the court at that time he
13 was not challenging jurisdiction but raising only the issue whether
14

15 ²The office of federal magistrate was established in 1968 by
16 the Federal Magistrates Act, Pub.L. No. 90-578, 82 Stat. 1108,
17 codified at 28 U.S.C. §§ 631-639. Magistrates replaced the former
18 United States Commissioners, and perform a number of functions in
19 the conduct of the judicial system, including the issuance of
20 warrants, the trial of petty criminal offenses, and the disposition
21 of discovery and other pretrial motions. See generally 28 U.S.C. §§
22 631-639 and the notes that follow. Effective December 1, 1990,
23 Congress changed the name of the office to "United States Magistrate
24 Judge." Sec. 321 of Pub.L. No. 101-650, 28 U.S.C. § 631.
25 Magistrate Judges do not have life tenure, but serve for a fixed
26 term, 28 U.S.C. § 631(e); under the U.S. Constitution they are
27 accordingly Article I judges, and not Article III judges. See
28 generally C. WRIGHT, FEDERAL COURTS § 11 (4th ed. 1983).

1 he was speeding on federal land. In the instant Motion, Defendant
2 has not provided this court with any legal or factual basis to
3 support his jurisdictional challenge other than arguments already
4 rejected.

5 **DISCOVERY**

6 Defendant contends he was not provided all the discovery he was
7 entitled to and because of that failure, was unable to present a
8 defense and now entitling him to voiding the judgment. The issue of
9 Defendant's access to discovery was raised at trial; the court
10 concluded discovery was governed by FED. R. CRIM. P. 58 and that
11 sufficient discovery was provided to meet federal constitutional
12 requirements. To the extent the government failed to provide
13 Defendant with additional information he sought, he has failed to
14 show how he was prejudiced. *United States v. Figueroa-Lopez*, 125
15 F.3d 1241, 1247 (9th Cir. 1997) (holding defendant "must
16 demonstrate prejudice to substantial rights to justify reversal for
17 violations of discovery rules"), *cert. denied*, 523 U.S. 1131 (1998).

18 **MIRANDA**

19 Defendant raised the issue of whether the traffic stop was an
20 arrest giving rise to the protections afforded by *Miranda v.*
21 *Arizona*, 384 U.S. 436 (1966). Even assuming the stop was an arrest,
22 a failure to provide Miranda warnings does not warrant voiding the
23 judgment of conviction as Defendant made no incriminating
24 statements. *Miranda*, at 443 (inculpatory statements made to police
25 authority without *Miranda* warnings must be suppressed).

26 **CONFRONTATION OF WITNESSES**

27 Defendant argued at trial and now repeats his argument he was
28 denied his ability to confront witnesses because he was accused by

1 the radar gun used by the officer. At trial, when he directed a
2 question to the radar gun, it remained silent. The court noted the
3 government provided an expert witness, properly tendered, to testify
4 as to the method of operation of the radar gun, its overall and
5 timely calibration, and proper use by the officer making the stop.
6 There was no regulation that required overall calibration by the
7 manufacturer every six months. The court found the officers'
8 testimony as to the radar gun and the absence of any interference
9 which would have affected its correct reading to be proof beyond a
10 reasonable doubt of Defendant's guilt. Accordingly,

11 **IT IS ORDERED:**

12 1. Defendant's Motion to Void Judgment (**Ct. Rec. 4**) is
13 **DENIED.**

14 2. Defendant is further advised that if he wishes to appeal
15 this ruling and his conviction to an Article III judge, he must file
16 a **Notice of Appeal** and pay the \$32 filing fee, 28 U.S.C. § 1914
17 (District Court Miscellaneous Fee Schedule (9)) (1948 & Supp. 2004),
18 **WITHIN TEN DAYS** of the date of this Order.

19 3. The District Court Executive is directed to file this Order
20 and provide a copy to counsel for Plaintiffs and Defendants.

21 DATED November 18, 2005.

22
23 S/ CYNTHIA IMBROGNO
24 UNITED STATES MAGISTRATE JUDGE
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